IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 276 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IMTIYAZ ABDULGAFUR FAKRA @ MOHAMMED HOGA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 276 of 2002

MR JB PARDIWALA for Petitioner No. 1-2

Ms P B Sheth, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/10/2003

ORAL JUDGEMENT

Rule. Ms Paurnami B Sheth, learned APP waives service of notice of rule on behalf of the State.

2. This is a criminal revision application filed under section 397 read with section 401 of the Criminal Procedure Code, 1973 challenging an order dated 22.4.2003 recorded by the learned Judicial Magistrate First Class, Umargaon in Valsad District below application Exh. 15 rejecting the said application of the petitioner for getting his passport.

3. The trial court had dismissed the said application and at the same time, had framed charge against the petitioner for offences punishable under Sections 120-B, 419, 420, 468 and section 114 of IPC read with section 12(1)(a) and 12(2) of the Passport Act. In view of the above position, the petitioner submitted application being Criminal Misc. Application No.9008 of 2002 in criminal revision application no.276 of 2002 for amending the prayer with a view to include the prayer challenging the order of framing of charge against the petitioner. The said amendment was permitted and, therefore, the said prayer is also there for consideration of this Court. The petitioner has mainly contended that before instituting any proceeding before a court of law, the prosecuting agency was required to obtain a sanction from the Central Government or an appropriate authority to institute proceedings against the petitioner. That the said sanction has not been obtained and, therefore, the proceedings against the petitioner are without any sanction and, therefore, the said proceedings could not proceed ahead against the petitioner in the eye of law.

4. In view of the above contentions, this revision application has been filed and the above order framing the charge against the petitioner has been challenged. With the consent of the learned Advocates for the parties this revision application is being heard finally.

5. It is undisputed that the petitioner has been charged for offence punishable under section 12(1) and 12(2) of the Passport Act, 1967. In order to appreciate the contentions of the petitioner, it would be worthwhile to refer to the provisions made in section 15 of the said Act. The said provision can be reproduced for ready reference:

> "15. Previous sanction of Central Government necessary - No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorised by that Government

by order in writing in this behalf."

6. On a bare reading of section 15 of the Act, it is very clear that even a prosecution can be instituted only on a previous sanction of the Central Government or such officer or authority as may be authorised by that Government by order in writing in that behalf. In other words, before prosecution could be instituted against the petitioner for offence under the Passport Act, 1967 (for short, 'the Act'), previous sanction of the Central Government or an authorised officer was a sina quo non. In the present case we find that it is an admitted position that no such sanction has been obtained before instituting the prosecution against the petitioner. Even after the institution of proceedings after submission of charge sheet and even after framing of charge and till today no such sanction has been obtained and produced on record. This means that the prosecution has been instituted, charge sheet has been filed and charges have been framed against the petitioner without having previous sanction from authorised or competent authority. When a provision has been made in section 15 of the Passport Act that no prosecution shall be instituted without valid sanction then the entire criminal prosecution against the petitioner itself is bad at the inception and the court below could not have taken cognizance of the offence and at least charge could not have been framed without having a valid sanction against the petitioner. It is not the case of the prosecution that some process is going on for obtaining sanction from the appropriate authority. In that view of the matter, this prosecution without a valid sanction is in violation of section 15 of the Act and consequently the order framing charge against the petitioner stand vitiated in absence of a valid sanction as required by section 15 of the said Act. In above view of the matter, the entire process of framing charge against the petitioner for offence punishable under the said Act, is illegal and, therefore, it would be necessary for this Court to interfere with the said order of the trial court. At the same time, it is required to be considered that this Court is not required to enter into the merit of the case. Therefore, as and when a valid sanction is obtained, it would be open to the prosecuting agency to relaunch the prosecution against the petitioner.

7. For the foregoing reasons, this revision application is allowed. The charge framed against the petitioner stands quashed and the petitioner is ordered to be discharged from criminal case No.818/2001 pending before the learned Judicial Magistrate First Class,

Umargaon. It is made clear that on obtaining valid sanction from the Central Government or from other competent officer/authority, it would be open to the prosecuting agency to relaunch prosecution against the petitioner, if they so desire. For that purpose, it would be appropriate to rely upon the observations made in the case of State of Tamil Nadu v. M M Rajendran, reported in (1998) 9 SCC 268. Rule is made absolute to the aforesaid extent. D.S. permitted.

[D P Buch, J.]

msp